UNIVERSAL EMANCIPATION WITHOUT COMPENSATION.

"May not Congress pronounce all slaves free? *The Constitution speaks to the point. They have the power in clear and unequivocal terms, and will clearly and certainly exercise it.*"—PATRICK HENRY.

SPEECH OF

HON. CHARLES SUMNER,

ON THE

Proposed Amendment of the Constitution Abolishing Slavery through the United States;

IN THE SENATE OF THE UNITED STATES, APRIL 8, 1864.

Mr. SUMNER. Mr. President, if an angel from the skies or a stranger from another planet were permitted to visit this earth and to examine its surface, who can doubt that his eyes would rest with astonishment upon the outstretched extent and exhaustless resources of this Republic of the New World, young in years but already rooted beyond any dynasty in history? In proportion as he considered and understood all those things among us which enter into and constitute the national life, his astonishment would increase, for he would find a numerous people, powerful beyond precedent, without a king or a noble, but with the schoolmaster instead. And yet the astonishment which he confessed, as all these things appeared before him, would swell into marvel as he learned that in this Republic, which had arrested his admiration, where there was neither king nor noble, but the schoolmaster instead, there were four million human beings in abject bondage, degraded to be chattels, under the pretense of property in man, driven by the lash like beasts, despoiled of all rights, even the right to knowledge and the sacred right of family; so that the relation of husband and wife was impossible and no parent could claim his own child; while all were condemned to brutish ignorance. Startled by what he beheld, the stranger would naturally inquire by what authority, under what sanction, and through what terms of law or Constitution, this fearful inconsistency, so shocking to human nature itself, continued to be upheld. But his growing astonishment would know no bounds, when he was pointed to the Constitution of the United States, as the final guardian and conservator of this peculiar and many-headed wickedness.

"And is it true," the stranger would exclaim, "that, in laying the foundations of this Republic, dedicated to human rights, all these wrongs have been positively established?" He would ask to see that

Constitution and to know the fatal words by which the sacrifice was commanded. The trembling with which he began its perusal would be succeeded by joy as he finished it; for he would find nothing in that golden text, not a single sentence, phrase, or word even, to serve as origin, authority, or apology, for the outrage. And then his astonishment, already knowing no bounds, would break forth anew, as he exclaimed, "Shameful and irrational as is slavery, it is not more shameful or irrational than that unsupported interpretation which undertakes to make your Constitution the final guardian and conservator of this terrible and unpardonable denial of human rights."

Such a stranger as I have described, coming from afar, with eyes which no local bias had distorted, and with understanding which no local custom had disturbed, would naturally see the Constitution precisely as it is in its actual text, and he would interpret it in its true sense, without prepossession or prejudice. Of course he would know, what all jurisprudence teaches and what all reason confirms, that human rights cannot be taken away by any indirection or by any vain imagining of something that was intended but was not said, and, as a natural consequence, that slavery can exist—if exist it can at all—only by virtue of a *positive text*, and that what is true of slavery is true also of all its incidents; and the enlightened stranger would insist that, in all interpretation of the Constitution, that cardinal principal must never for a moment be out of mind, but must be kept ever forward as guide and master, that *slavery cannot stand on inference*, nor can any support of slavery stand on inference. Thus informed, and in the light of a pervasive principle,

"How far that little candle throws his beams!"

he would peruse the Constitution from beginning to end, from its opening preamble to its final amendment, and then the joyful opinion would be given.

There are three things which he would observe: first and foremost, that the dismal words "slave" and "slavery" do not appear in the Constitution; so that if the unnatural pretension of property in man lurk anywhere in that text, it is under a feigned name or an *alias*, which of itself is cause of suspicion, while an imperative rule renders its recognition impossible. Next, he would consider the preamble, which is the key to open the whole succeeding instrument; but here no single word can be found which does not open the Constitution to freedom and close it to slavery. The object of the Constitution is announced to be "in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of *liberty* to ourselves and our posterity;" all of which, in every particular, is absolutely inconsistent with slavery. And thirdly, he would observe those time-honored, most efficacious, chain-breaking words in the Amendments: "*No person shall be deprived of* life, *liberty*, or property, *without due process of law*." Scorning all false interpretations and glosses which may have been fastened upon the Constitution as a support of slavery, and with these three things before him, he would naturally declare that there was nothing in the original text on which this hideous wrong could

be founded anywhere within the sphere of its operation. With astonishment he would ask again by what strange delusion or hallucination the reason had been so far overcome as to recognize slavery in the Constitution, when plainly it is not there, and cannot be there? The answer is humiliating, but it is easy.

People naturally find in texts of Scripture the support of their own religious opinions or prejudices; and, in the same way, they naturally find in texts of the Constitution the support of their own political opinions or prejudices. And this may not be in either case because Scripture or Constitution, when truly interpreted, support these opinions or prejudices; but because people are apt to find in texts simply a reflection of themselves. Most clearly and indubitably, whoever finds any support of slavery in the Constitution of the United States has first found such support in himself; not that he will hesitate, perhaps, to condemn slavery in words of approved gentleness, but because from unhappy education or more unhappy insensibility to this wrong, he has already conceded to it a certain traditional foothold of immunity, which he straightway transfers from himself to the Constitution. In dealing with this subject, it is not the Constitution, so much as human nature itself, which has been at fault. Let the people change, and the Constitution will change also; for the Constitution is but the shadow, while the people are the substance.

But under the influence of the present struggle for national life, and in obedience to its incessant exigencies, the people have already changed, and in nothing so much as slavery. Old opinions and prejudices have dissolved, and that traditional foothold which slavery once possessed has been gradually weakened until now it scarcely exists. Naturally this change must sooner or later show itself in the interpretation of the Constitution. But it is already visible even there, in the concession of powers over slavery which were formerly denied. The time, then, has come when the Constitution, which has been so long interpreted for slavery, may be interpreted for freedom. This is one stage of triumph. Universal emancipation, which is at hand, can be won only by complete emancipation of the Constitution itself, which has been degraded to wear chains so long that its real character is scarcely known.

Sometimes the concession is made on the ground of *military necessity*. The capacious war powers of the Constitution are invoked, and it is said that in their legitimate exercise slavery may be destroyed. There is much in this concession; more even than is imagined by many from whom it proceeds. It is war, say they, which puts these powers in motion; but they forget that wherever slavery exists there is perpetual war—that slavery itself is a *state of war* between two races, where one is for the moment victor—pictured accurately by Jefferson when he described it as "permitting one half of the citizens to trample on the rights of the other, transforming those into enemies, and these into despots." Therefore, wherever slavery exists, even in seeming peace, the war powers may be invoked to put an end to a condition which is internecine, and to overthrow pretensions which are hostile to every attribute of the Almighty.

But it is not on military necessity alone that the concession is made. There are many who, as they read the Constitution now, see its powers over slavery more clearly than before. The old superstition is abandoned; and they join with Patrick Henry when, in the Virginia convention, he declared that the power of manumission was given to Congress. He did not hesitate to argue against the adoption of the Constitution because it gave this power. And shall we be less perspicacious for freedom than this Virginia statesman was for slavery? Discerning this power he confessed his dismay; but let us confess our joy.

We have already seen that slavery can find no support in the Constitution. Glance now at the positive provisions by which it is brought completely under the control of Congress.

1. First among the powers of Congress, and associated with the power to lay and collect taxes, is that "to provide for the common defence and general welfare." It has been questioned whether this is a substantive power, or simply incident to that with which it is associated. But it seems difficult, if not absurd, to insist that Congress has not this substantive power. Shall it not provide for the common defence? Shall it not provide for the general welfare? If it cannot do these things in a great crisis it had better abdicate. In the discussions on the Constitution in the Virginia convention, Mr. George Mason, one of its most decided opponents, said: "That Congress should have power to provide for the general welfare of the Union, *I grant.*" (2 Eliot's Debates, 327.) But the language of Patrick Henry, to which allusion has been already made, was still more explicit. He foresaw that this power would naturally be directed against slavery, and he said:

"Slavery is detested. We feel its fatal effects. We deplore it with all the pity of humanity. Let all these considerations, at some future period, press with full force on the minds of Congress. Let that urbanity which, I trust, will distinguish Americans, and the necessity of national defence—let all these things operate on their minds; they will search that paper [the Constitution] and see if they have the power of manumission. And have they not, sir? Have they not the power *to provide for the general defence and welfare?* May they not think that they call for the abolition of slavery? May they not pronounce all slaves free? And will they not be warranted by that power? This is no ambiguous implication or logical deduction. *The paper speaks to the point. They have the power in clear and unequivocal terms, and will clearly and certainly exercise it.*"—*Eliot's Debates*, vol. 3. p. 590.

Language could not be more positive. To all who ask for the power of Congress over slavery, here is a sufficient answer; and remember that this is not my speech, but the speech of Patrick Henry, who says that the Constitution "speaks to the point."

2. Next comes the clause, "Congress shall have power to declare war; to raise and suport armies; to provide and maintain a navy." A power like this is from its very nature unlimited. In raising and supporting an army, in providing and maintaining a navy, Congress is not restrained to any particular class or color. It may call upon all and authorize that *contract* which the Government makes with an enlisted soldier. But such a contract would be in itself an act of manumission; for a slave cannot make a contract. And if the contract be followed by actual service, who can deny its completest efficiency in enfranchising the soldier-slave and his whole family? Shakspeare, immortal teacher, gives expression to an instinctive sentiment when he

makes Henry V, on the eve of the battle of Agincourt, encourages his men by promising,

> "For he to day that sheds his blood with me,
> Shall be my brother; *be he ne'er so vile,*
> *This day shall gentle his condition.*"

3. There is still another clause: "The United States shall guaranty to every State in this Union a *republican form of government.*" There again is a plain duty. But the question recurs, what is a republican form of government? John Adams, in the correspondence of his old age, says:

> "The customary meanings of the words *republic* and *commonwealth* have been infinite. They have been applied to every Government under heaven; that of Turkey and that of Spain, as well as that of Athens and of Rome, of Geneva and San Marino."—*John Adams's Works*, volume 10, page 378.

But the guarantee of a republican form of government must have a meaning congenial with the purposes of the Constitution. If a Government like that of Turkey, or even like that of Venice, could come within the scope of this guarantee, it would be of little value. It would be words and nothing more. Evidently it must be construed so as to uphold the Constitution according to all the promises of its preamble, and Mr. Madison has left a record, first published to the Senate by the distinguished Senator from Vermont, [Mr. COLLAMER,] the chairman of the Committee on the Library, showing that it was originally suggested in part by the fear of slavery, so that in construing it we must not forget slavery. The preamble and the record are important, disclosing the real intention of this guarantee. But no American need be at a loss to designate some of the distinctive elements of a republic according to the idea of American institutions. These will be found, first, in the Declaration of Independence, by which it is solemnly announced "that all men are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness." And they will be found, secondly, in that other guarantee and prohibition of the Constitution, in harmony with the Declaration of Independence; "*No person* shall be deprived of life, *liberty* or property *without due process of law.*" Such are some of the essential elements of a "republican form of government," which cannot be disowned by us without disowning the very muniments of our liberties; and it is these which the United States are bound to guaranty. But all these make slavery impossible. It is idle to say that this result was not anticipated. It would be, then, only another illustration that our fathers "builded wiser than they knew."

4. But, independent of the clause of guarantee, there is the clause just quoted, which in itself is a source of power: "*No person* shall be deprived of life, *liberty*, or property *without due process of law.*" This was a part of the amendments to the Constitution proposed by the First Congress, under the popular demand for a Bill of Rights. Though brief, it is in itself alone a whole Bill of Rights. Liberty can be lost only by "due process of law," words borrowed from the old liberty-loving common law, illustrated by our master in law, Lord Coke, but best explained by the late Mr. Justice Bronson, of New York, in a judicial opinion where he says:

"The meaning of the section then seems to be, that *no member of the State shall be disfranchised or deprived of any of his rights or privileges* unless the matter shall be adjudged against him upon trial had according to the course of common law. The words 'due process of law' in this place cannot mean less than a prosecution or suit instituted and conducted according to the prescribed forms and solemnities for ascertaining guilt or determining the title to property."—4 *Hill's Reports*, 146.

Such is the protection which is thrown by the Constitution over every "person," without distinction of race or color, class or condition. There can be no doubt about the universality of this protection. All, without exception, come within its scope. Its natural meaning is plain; but there is an incident of history which makes it plainer still, excluding all possibilibily of misconception. A clause of this character was originally recommended as an amendment by two slave States, North Carolina and Virginia, but it was restrained by them to *freemen*, thus: "No *freeman* ought to be deprived of his life, *liberty*, or property but by the *law of the land*." But, when the recommendation came before Congress, the word "person" was substituted for "freeman," and the more searching phrase "due process of law" was substituted for "the law of the land." In making this change, rejecting the recommendation of two slave States, the authors of this amendment revealed their purpose, that *no person* wearing the human form should be deprived of *liberty* without due process of law; and the proposition was adopted by the votes of Congress and then of the States as a part of the Constitution. Clearly on its face it is an express guarantee of personal liberty and an express prohibition against its invasion anywhere.

In the face of this guarantee and prohibition—for it is both—how can any "person" be held as a slave? But it is sometimes said that this provision must be restrained to places within the exclusive jurisdiction of the national Government. Let me say frankly that such formerly was my own impression, often avowed in this Chamber; but I never doubted its complete efficacy to render slavery unconstitutional in all such places, so that "no person" could be held as a slave at the national capitol or in any national territory. Constitutionally slavery has always been an outlaw wherever that provision of the Constitution was applicable. Nobody doubted that it was binding on the national courts, and yet it was left unexecuted—a dead letter, killed by the predominant influence of slavery, until at last Congress was obliged by legislative act to do what the courts had failed to do, and to put an end to slavery in the national capital and national territories.

But there are no words in this guarantee and prohibition by which they are restrained to any exclusive jurisdiction. They are broad and general as the Constitution itself; and since they are in support of human rights they cannot be restrained by any interpretation. There is no limitation in them, and nobody can supply any such limitation, without encountering the venerable maxim of law, *Impius ac crudelis qui libertati non favet*—"Impious and cruel is he who does not favor liberty." Long enough courts and Congress have merited this condemnation. The time has come when they should merit it no longer. The Constitution should become a living letter under the predominant influence of freedom. It is this conviction which has brought petitioners to Congress, during the present session, asking that the Con-

stitution shall be simply executed against slavery and not altered. Ah! sir, it would be a glad sight to see that Constitution, which we have all sworn to support, interpreted generously, nobly, gloriously for freedom, so that everywhere within its influence the chains should drop from the slave. If it be said that this was not anticipated at the adoption of the Constitution, I remind you of the words of Patrick Henry at the time when he said, "the paper speaks to the point." No doubt. It does speak to the point, especially since the adoption of the amendments. Cicero preferred to err with Plato rather than to think right with other men. And pardon me if on this occasion, when my country is in peril from slavery, and when human rights are to be rescued, I prefer to err with Patrick Henry, in assuming power for freedom, rather than to think right with Senators who hesitate in such a cause.

Mr. President, thus stands the case. There is nothing in the Constitution on which slavery can rest, or find any the least support. Even on the face of that instrument it is an *outlaw;* but if we look further into its provisions we find at least four distinct sources of power, which, if executed, must render slavery impossible, while the preamble makes them all vital for freedom: first, the power to provide for the common defence and general welfare; secondly, the power to raise armies and maintain navies; thirdly, the power to guaranty to every State a republican form of government; and fourthly, the power to secure *liberty* to every person restrained without due process of law. But all these provisions are something more than powers; *they are duties also.* And yet we are constantly and painfully reminded in this Chamber that pending measures against slavery are unconstitutional. Sir, this is an immense mistake. *Nothing against slavery can be unconstitutional.* It is only *hesitation* which is unconstitutional.

And yet slavery still exists—in defiance of all these requirements of the Constitution; nay, more, in defiance of reason and justice, which can never be disobeyed with impunity—it exists, the perpetual spoiler of human rights and disturber of the public peace, degrading master as well as slave, corrupting society, weakening Government, impoverishing the very soil itself, and impairing the natural resources of the country. Such an outrage, so offensive in every respect, not only to the Constitution, but also to the whole system of order by which the universe is governed, is plainly a *national nuisance,* which, for the general welfare and in the name of justice, ought to be abated. But at this moment, when it menaces the national life, it will not be enough to treat slavery merely as a nuisance; for it is much more. It is a public enemy and traitor wherever it shows itself, to be subdued, in the discharge of solemn guarantees of Government and of personal rights, and in the exercise of unquestionable and indefeasible rights of *self-defence.* All now admit that in the rebel States it is a *public enemy and traitor,* so that the rebellion may be seen in slavery, and slavery may be seen in the rebellion. But slavery throughout the country, everywhere within the national limits, is a *living unit, one and indivisible*—so that even outside the rebel States it is the same public enemy and traitor, lending succor to the rebellion, and holding out

"blue lights" to encourage and direct its operations. But whether regarded as national nuisance or as public enemy and traitor, it is obnoxious to the same judgment and must be abolished.

If, in abolishing slavery, any injury were done to the just interests of any human being or to any rights of any kind, there might be something "to give us pause," even against these irresistible requirements. But nothing of the kind can ensue. No just interests and no rights can suffer. It is the rare felicity of such an act, as well outside as inside the rebel States, that, while striking a blow at the rebellion, and assuring future tranquillity, so that the Republic shall no longer be a house divided against itself, it will add at once to the value of the whole fee simple wherever slavery exists, will secure individual rights, and will advance civilization itself.

There is another motive to abolish slavery at this time. Embattled armies now stand face to face, on the one side fighting for slavery. The gauntlet that has been flung down we have yet taken up only in part. In abolishing slavery entirely we take up the gauntlet entirely. Then can we look with confidence to the blessings of Almighty God upon our arms. "'Till America comes into this measure," said John Jay during the Revolution, "her prayers to Heaven will be impious." So long as we sustain slavery, so long as we hesitate to strike at it, the heavy battalions of our armies will fail in power. Sir Giles Overreach found his sword, as he attempted to draw it, "glued with orphan's tears." Let not our soldiers find their swords "glued" with the tears of the slave.

There is one question and only one which rises in our path; and this only because the national representatives have so long been drugged and drenched with slavery, which they have taken in all forms, whether of dose or *douche*, that, like a long-suffering patient, they are not yet emancipated from its influence. I refer, of course, to the question of compensation under the shameful assumption that there can be property in man. Sir, there was a moment when I was willing to pay money largely, or at least to any reasonable amount, for emancipation; but it was *as ransom*, and never as compensation. Thank God! that time has now passed, never to return; and simply because money is no longer needed for the purpose. Our fathers under Washington never paid the Algerines for the emancipation of our enslaved fellow-citizens, except as ransom, and they ceased all such tribute when emancipation could be had without it. Such must be our rule now. Any other rule would be to impoverish the Treasury for nothing. The time has come for the old tocsin to sound, "Millions for defense, not a cent for tribute." Ay, sir; millions of dollars—with millions of strong arms also—to defend our country against slave-masters; but not a cent for tribute to slave-masters.

But if money is to be paid as compensation, clearly it cannot go to the master, who for generations has robbed the slave of his toil and all its fruits, so that, in justice, he may be regarded now as the trustee of accumulated earnings with interest which he has never paid over. Any money paid as compensation must belong, every dollar of it, to the slave. If the case were audited in Heaven's chancery, there must be

another allowance for the denial of inestimable rights. The loss of wages may be estimsted, but where is the tariff or price-current by which those other losses which have been the lot of every slave shall be determined? Mortal arithmetic is impotent to assess the fearful sum total. In presence of this infinite responsibility the whole question must be referred to that other tribunal where master and slave will be equal, while infinite wisdom tempers justice with mercy.

But the proposition of compensation is founded on the intolerable assumption of property in man, an idea which often intrudes into these debates, sometimes from its open vindicators and sometimes from others who reluctantly recognize it, but allow it to influence their conduct which is thus "sicklied o'er" with slavery. Sir, parliamentary law must be observed; but if an outburst of indignant hisses were ever justifiable in a parliamentary assembly it ought to break forth at every mention of this proposition, whatever form it may take—whether of daring assumption, or the mildest suggestion, or equivocation even. Impious toward God and insulting toward man, it is disowned alike by the conscience and the reason; nor is there any softness of argument or phrase by which its essential wickedness can be disguised. The fool hath said in his heart that there is no God; but it is kindred folly to say that there is no Man. The first is atheism, and the second is like unto the first.

Foremost of all persons in history who have vindicated human liberty, and associated their names with it forevermore, stands John Milton, the secretary of Oliver Cromwell and the author of Paradise Lost. Cradled under a lawless royalty, he helped to found and support the English Commonwealth, while in all that he wrote he pleaded for human rights, now in defense of the English people, who had beheaded their king, and now in immortal poems which show how wisely and well he loved the cause which he had made his own. Nowhere has this assumption of property in man been encountered more completely, than in the conversation between the archangel and Adam, after the former had pictured a hunter whose game was "men, not beasts:"

> "O *execrable son!* so to aspire
> Above his brethren, to himself *assuming*
> Authority usurped, from God not given!
> He gave us only over beast, fish, fowl,
> Dominion absolute; that right we hold
> By His donation; but man over men
> He made not lord, such title to Himself
> Reserving, human left from human free."
>
> *Paradise Lost, Book Twelve*—64–73.

But every asserter of property in man puts himself in the very place of this hunter of "men, not beasts," who is described as "execrable son so to aspire." The language is strong; but not too strong. "Execrable" is the assumption; "execrable" wherever made; "execrable" on the plantation; "execrable" in this chamber; "execrable" in all its forms; "execrable" in all its consequences; especially "execrable" as an apology for hesitation against slavery. The assumption, wherever it shows itself, must like Satan himself, in whom it has its origin, be beaten down under our feet.

Again, we are brought by learned Senators to the Constitution, which requires that there shall be "just compensation" where "private property"

is taken for public use. But plainly on the present occasion the requirement of the Constitution is absolutely inapplicable, for there is no "private property" to take. Slavery is but a bundle of barbarous pretensions, from which certain persons are to be released. At what price shall these pretensions be estimated? How much shall be paid for the controlling pretension of property in man? How much shall be allowed for that other pretension to shut the gates of knowledge, and keep the victim from the book of life? How much shall be expended to redeem the pretension to rob a human being of all the fruits of his toil? And, sir, what "just compensation" shall be voted for the renunciation of that Heaven-defying pretension, too disgusting to picture, which, trampling on the most sacred relations, makes wife and child the wretched prey of lust or avarice? Let these pretensions be renounced, and slavery ceases to exist; but there can be no "just compensation" for any such renunciation. The human heart, reason, religion, the Constitution itself, rise in judgment against it. As well vote "just compensation" to the hardened offender who renounces his disobedience to the Ten Commandments and promises that he will cease to steal, that he will cease to commit adultery, and that he will cease to covet his neighbor's wife. Aye, sir, there is nothing in the Constitution to sanction any such outrage. Such an appropriation would be unconstitutional.

Mr. Madison said in the convention that "it was wrong to admit in the Constitution the idea that there could be property in man." (3 Madison Papers, 1629.) Of course it was wrong. It was criminal and unpardonable. Thank God! it was not done. But Senators admit this "idea" daily. They take it from themselves, and then introduce it where Mr. Madison said it was "wrong." But if it was "wrong" at the adoption of the Constitution to do this thing, how much worse is it now! There is no instinct of patriotism, as there is no conclusion of reason, which must not be against the abomination; and yet, sir, it is allowed to enter into these debates. Sometimes it stalks, and sometimes it skulks; but whether stalking or skulking, it must be encountered with the same indignant rebuke, until it shall no longer venture to show its head.

Putting aside, then, all objections that have been interposed, whether proceeding from open opposition or from lukewarm support, the great question recurs—that question which dominates this whole debate; how shall slavery be overthrown? The answer is three-fold: first, by the courts, declaring and applying the true principles of the Constitution; secondly, by Congress, in the exercise of the powers which belong to it; and, thirdly, by the people, through an amendment to the Constitution. Courts, Congress, people, all may be invoked, and the occasion will justify the appeal.

1. Let the appeal be made to the courts. But alas! one of the saddest chapters in our history has been the conduct of judges, who have lent themselves to the support of slavery. Injunctions of the Constitution, guarantees of personal liberty, and prohibitions against its invasion, have all been forgotten. Courts, which should have been asylums of liberty, have been changed into *barracoons*, and the Supreme Court of

the United States, by a final decision of surpassing infamy, became the greatest *barracoon* of all. It has been part of the calamity of the times, that, under the influence of slavery, justice, like Astræa of old, had fled. But now at last, in a regenerated Republic, with the power of slavery waning, and the people rising in judgment against it, let us hope that the judgments of courts may be reconsidered, and that the powers of the Constitution in behalf of liberty may be fully exercised, so that human bondage shall no longer find an unnatural support from the lips of judges,

"—— and ancient frauds shall fail,
Returning Justice lift aloft her scale."

Sir, no court can afford to do an act of wrong. Its business is justice; and when, under any apology, it ceases to do justice, it loses those titles to reverence which otherwise are so willingly bestowed. There are instances of great magistrates who have openly declared their disobedience to laws "against common right and reason," and their names are mentioned with gratitude in the history of jurisprudence. There are other instances of men holding the balance and the sword, whose names have been gathered into a volume as "atrocious judges." If our judges, who have cruelly interpreted the Constitution in favor of slavery, do not come into the latter class, they clearly can claim no place among those others who have stood for justice, like the rock on which the sea breaks in idle spray. Vainly do you attempt to frame injustice into a law, or to sanctify it by any judgment of court. From Cicero we learn that "if laws were made merely by the ordinances of the people, the decrees of princes, *or the sentences of judges,* then the setting up forged wills might be lawful, adultery might be lawful," (*De Legibus,* Lib. I, § 17;) and Augustine tells us, with saintly authority, that what is unjust cannot be law. Every law and every judgment of court, to be binding, must have at its back the everlasting, irrepealable law of God. Doubtless the model decision of the American bench, destined to be quoted hereafter with the most honor, because the boldest in its conformity with the great principles of humanity and social order, was that of the Vermont judge, who refused to surrender a fugitive slave *until his pretended master should show a title-deed from the Almighty.*

But the courts have no longer any occasion for such boldness. They need not step outside the Constitution. It is only needed that they should follow just principles in its interpretation. Let them be guided by a teacher like Edmund Burke, who spoke as follows:

"*Men cannot covenant themselves out of their rights and their duties;* nor by any other means can arbitrary power be conveyed to any man. *Those who give to others such rights, perform acts that are void as they are given.*" * * * * * * * * "Those who give and those who receive arbitrary power are alike criminal, and there is no man but is bound to resist it to the best of his power, wherever it shall show its face in the world." It is a crime to bear it wherever it can be rationally shaken off."—*Speech on impeachment of Warren Hastings.*

Or let them be guided by that other teacher, Lord Chatham, when he said:

"With respect to the decisions of the courts of justice I am far from denying their due weight and authority; yet placing them in the most respectable view, I will consider them, not as law, but as an evidence of the law; and before they can arrive even at that degree of authority, it must appear that they are founded in, and confirmed by,

reason; that they are supported by precedents, taken from good and moderate times; that they do not contradict any positive law; that they are submitted to without reluctance by the people; that they are unquestioned by the legislature, (which is equivalent to a tacit confirmation,) *and what in my judgment is by far the most important, that they do not violate the spirit of the constitution.*"—*Speech of Lord Chatham in* 1770, *with regard to the proceedings on the Middlesex election.*

If courts were thus inspired, it is easy to see that slavery would disappear under their righteous judgments.

2. But unhappily the courts will not perform the duty of the hour, and we must look elsewhere. An appeal must be made to Congress; and here, as has been fully developed, the powers are ample, unless in their interpretation you surrender in advance to slavery. By a single brief statute, Congress may sweep slavery out of existence. Patrick Henry saw and declared that, under the influence of a growing detestation of slavery and the increasing "urbanity" of the people, this must be expected, while all the capacious war powers proclaim trumpet-tongued that it can be done constitutionally, and the peace powers now echo back the war powers.

Of course we encounter here again the "execrable" pretension of property in man, and the claim of "just compensation" for the renunciation of Heaven-defying wrongs. But this pretension is no more applicable to abolition by act of Congress than to abolition by an amendment of the Constitution; so that if the claim of "just compensation" can be discarded in one case it can be in the other. But the votes that have already been taken in the Senate on the latter proposition testify that it is discarded. Sir, let the "execrable" pretension never again be named, except for condemnation, no matter how or when it appears or what the form it may take. Let the "idea," which was originally branded as so "wrong" that it could not find a place in the Constitution, never find a place in our debates.

But even if Congress be not prepared for that single decisive measure which shall promptly put an end to this whole question and strike slavery to death, there are other measures by which this end may be hastened. The towering Upas may be girdled, even if it may not be felled at once to the earth. Already, by acts of Congress, slavery has been abolished in the national capital and in the national territories. But this is not enough.

The fugitive slave bill, conceived in iniquity and imposed upon the North as a badge of subjugation, may be repealed.

The coastwise slave trade may be deprived of all support in the statute book.

The traffic in human beings, as an article of "commerce among the States," may be extirpated.

And, above all, that odious rule of evidence, so injurious to justice and discreditable to the country, excluding the testimony of colored persons in national courts, may be abolished.

And there is one other thing which must be done. The enlistment of colored persons must be encouraged by legislation in every possible form; for enlistment is emancipation. That contract by which the soldier-slave promises service at the hazard of life, like the contract of marriage, fixes the equality of the parties, which Congress, for the

national defence, and the national character also, must sacredly maintain.

All these thing at least may be done, and when they are done, Heaven and earth will be glad; for they will see an assurance that all will be done.

But all these will not be enough. The people must be summoned to confirm the whole work. It is for them to put the cap-stone upon the sublime structure. An amendment of the Constitution may do what courts and Congress decline to do, or, even should they act, it may cover their action with its panoply. Such an amendment, in any event, will give completeness and permanence to emancipation and bring the Constitution into avowed harmony with the Declaration of Independence. Happy day, long wished for, destined to gladden those beatified spirits who have labored on earth to this end, but died without the sight.

And yet let us not indiscreetly take counsel of our hopes. From the nature of the case such an amendment cannot be consummated at once. Time must intervene, with opportunities of opposition. It can pass Congress only by a vote of two-thirds of both branches. And when it has passed both branches of Congress it must be adopted by the Legislatures of three-fourths of the States. Even under the most favorable circumstances it is impossible to say when it can become a part of the Constitution. Too tardily, I fear, for all the good that is sought. Therefore I am not content with this measure alone. It postpones till to-morrow what ought to be done to-day; and I much fear that it may be made an apology for indifference to other propositions, which are of direct practical significance; as if it were not unpardonable to neglect for a day the duties we owe to Human Rights.

> "To-morrow, and to-morrow, and to-morrow,
> Creeps in this petty pace from day to day,
> To the last syllable of recorded time;
> And all our yesterdays have lighted fools
> The way to dusty death."

For myself let me confess that, in presence of the mighty events of the day, I feel how insignicant is any individual, whether citizen or Senator; and yet, humbly longing to do my part, I cannot consent to put off till to-morrow what ought to be done to-day. Beyond my general desire to see an act of universal emancipation that shall at once and forever settle this great question, so that it may no longer be the occasion of strife between us, there are two other ideas which are ever present to my mind as a practical legislator: first, to strike at slavery wherever I can hit it; and secondly, to clean the statute book of all existing supports of slavery, so that it may find nothing there to which it may cling for life. To do less than this at the present moment, when slavery is still menacing, would be an abandonment of duty.

So long as a single slave continues anywhere beneath the flag of the Republic I am unwilling to rest. Too well I know the vitality of slavery with its infinite capacity of propagation, and how little slavery it takes to make a slave State with all the cruel pretensions of slavery. The down of a single thistle is full of all possible thistles, and a single fish is said to contain two hundred millions of eggs, so that the whole sea might be stocked from its womb.

The founder of political science in modern times, writer as well as statesman, Machiavelli, in his most instructive work, the Discourses on Livy, has a chapter entitled, "To have long life in a republic, it is necessary to draw it back often to its origin:" and in the chapter he shows how the original virtue in which a republic was founded becomes so far corrupted, that, in the process of time, the body-politic must be destroyed; as in the case of the natural body, where, according to the doctors of medicine, there is something added daily which perpetually requires cure, *quod quotidie aggregatur aliquid, quod quandoque indiget curatione* He teaches under this head that republics are brought back to their origin, and the principles in which they were founded, by pressure without where prudence fails within, and he affirms that the destruction of Rome by the Gauls was necessary that the republic might have a new birth, and thus acquire new life and new virtue, all of which ensued when the barbarians had been driven back. The illustration, perhaps, is fanciful, but there is wisdom in the counsel, and now the time has come for its application. The Gauls are upon us, not, however, from a distance, but domestic Gauls, and we, too, may profit by the occasion to secure for the Republic a new birth, that it may acquire new life and new virtue. Happily, in our case the way is easy, for it is only necessary to carry the Republic back to its baptismal vows, and the declared sentiments of its origin. There is the Declaration of Independence: let its solemn promises be redeemed. There is the Constitution: let it speak, according to the promises of the Declaration.

Mr. President, the immediate question now before us is on the proposition to prohibit slavery everywhere throughout the whole country by constitutional amendment; and here I hope to be indulged for a moment with regard to the form which it should take. A new text of the Constitution cannot be considered too carefully even in this respect, especially when it embodies a new article of freedom. Here for a moment we are performing something of that duty which belongs to the *conditores imperii*, placed foremost by Lord Bacon among the actors in human affairs, and "words" become "things." From the magnitude of the task we may naturally borrow circumspection, and I approach this part of the question with suggestion rather than argument.

Let me say frankly that I should prefer a form of expression different from that which has the sanction of the committee. They have selected what was intended for the old Jeffersonian ordinance, sacred in our history, although, let me add, they have not imitated it closely. But I must be pardoned if I venture to doubt the expediency of perpetuating in the Constitution language which, if it have any signification, seems to imply that "slavery or involuntary servitude" may be provided "for the punishment of crime." It is supposed that there was a reason for this language when it was first employed, but that reason no longer exists. There can be no reason why slavery should not be forbidden positively and without exception, especially as "imprisonment" cannot be confounded with this "peculiar" wrong. If my desires could prevail, I would put aside the ordinance on this occasion, and find another form.

I know nothing better than these words:

"All persons are equal before the law, so that no person can hold another as a slave; and the Congress shall have power to make all laws necessary and proper to carry this declaration into effect everywhere within the United States and the jurisdiction thereof."

The words in the latter part supersede all questions as to the applicability of the declaration to the States. But the distinctive words in this clause assert the *equality of all persons before the law.* The language may be new in our country, but it is already well known in history. And here let me show how it has grown to its present place of authority. We must repair for a moment to France.

The first constitution adopted by France, September, 1791, in the throes of revolution, was preceded by a Declaration of Rights, which, after setting forth that "ignor-

ance, forgetfulness, or contempt of the rights of man are the sole causes of public evils and of the corruption of Governments," undertakes to announce "the natural rights of man, inalienable and sacred, to the end that this Declaration, constantly present to all the members of the social system, may without cessation recall their rights and duties; to the end that the acts of the legislative power and those of the executive power capable at each instant of being compared with the object of every political institution, may be more respected; to the end that the claims of citizens, founded on simple and incontestable principles, may turn always to the maintainance of the constitution, and the happiness of all." After this too elaborate preamble the declaration begins with an article, which has a generality of expression, not unlike that of our own Declaration of Independence.

"ART. 1. Men are born and continue free and *equal in rights.*"

Next came the Constitution of June, 1793, which, after a preamble, sets forth a a series of articles, beginning with three, as follows:

"ART. 1. The object of society is the common happiness. Government is instituted to guaranty to man the enjoyment of his natural and imprescriptible rights.

"2. These rights are equality, liberty, security, property.

"3. *All men are equal* by nature and *before the law.*"

Here the declaration in question begins to show itself. Men are equal by nature and *before the law.*

This same Constitution concludes with what is called a guaranty of rights, in the following article:

"ART. 122. The Constitution guarantees to all Frenchmen equality, liberty, security, property, the public debt, the free exercise of worship, common instruction, public assistance, the indefinite liberty of the press, the right of petition, the right to assemble in public meetings, the enjoyment of all the rights of men."

Then came the constitutional charter of June, 1814, following the restoration of the Bourbons, which begins in the following article:

"ART 1. *Frenchmen are equal before the law,* whatever may be otherwise their title and ranks."

This is followed by another, as follows:

"ART. 4. Their individual liberty is equally guarantied, so that nobody can be prosecuted or arrested except in cases provided for by law, and in the form which it prescribes."

The constitutional charter of August, 1830, at the installation of Louis Philippe as king, with La Fayette by his side, contains the articles already quoted from that of Louis XVIII, in the same words, placing the declaration of *equality before the law* in the front.

And this article has been adopted in the charters of Belgium, Italy, Greece; so that it is now the well-known expression of a commanding principle of human rights.

It will be felt at once that this expression, "*equality before the law,*" gives precision to that idea of human rights which is enunciated in our Declaration of Independence. The sophistries of Calhoun, founded on the obvious inequalities of body and mind, are all overthrown by this simple statement, which, though borrowed latterly from France, is older than French history. The curious student will find in the ancient Greek of Herodotus a single word which supplies the place of this phrase, when he tell us that "the government of the many has the most beautiful name of "ισονομία," or *equality before the law.* (Book 3, p. 80.) The father of history was right. The name is most beautiful; but it is not a little singular that, in an age when *equality before the law* was practically unknown, the Greek language, so remarkable for its flexibility and comprehensiveness, supplied a single word, not to be found in modern tongues, to express an idea which has been authoritatively recognized only in modern times. Such a word in our own language to express that equality of rights which is claimed for all mankind might have superseded some of the criticism to which this declaration has been exposed.

Enough has been said to explain the origin of the expression which is now proposed. Though traced to distant antiquity and now adopted in various countries, it derives its modern authority from France, where it is the "well-ripened fruit" of an unprecedented experience in the discussion of great problems of political science. Naturally, it does not come from England; for the idea itself finds little favor in that hierarchical kingdom. In France equality prevails more than liberty. In England liberty prevails more than equality. Here among us both should find a home, and such a declaration as I now propose, embodying *liberty and equality,* will keep the double idea perpetually in the public mind and conscience, "to warn, to comfort, and command." The denial of Liberty in the rebel States begins with a denial of Equality, so that our work is not completely done without the assertion of both principles.

Should the Senate not incline to this form, there is still another which I would suggest, as follows:

"Slavery shall not exist anywhere within the United States or the jurisdiction thereof; and the Congress shall have power to make all laws necessary and proper to carry this prohibition into effect."

This is simple, and avoids all language which is open to question. The word "slavery" is explicit, and describes precisely what it is proposed to blast. There is no doubt with regard to its signification. It cannot be confounded with "the punishment of crimes:" for imprisonment is not slavery; nor can any punishment take the form of a wrong which stands by itself, peculiar, terrible, outrageous. Therefore nothing about punishment should find a place in the rule which we ordain.

But if the Senate is determined to adhere to the Jeffersonian ordinance, then I prefer that it should be the ordinance actually, and not as reported by the committee. And I would complete the work by expelling from the Constitution all those words which have been misconstrued, perverted and tortured to a false support of slavery.

But while desirous of seeing the great rule of freedom which we are about to ordain embodied in a text which shall be like the precious casket to the more precious treasure, yet I confess that I feel humbled by my own endeavors. And whatever may be the judgment of the Senate, I am consoled by the thought that the most homely text containing such a rule will be more beautiful far than any words of poetry or eloquence, and that it will endure to be read with gratitude when the rising dome of this capitol, with the statue of liberty which surmounts it, has crumbled to dust.

H. Polkinhorn, printer, 375 and 377 D street, near Seventh, Washington, D. C.

71.2009.084.09809